

**House File 416 - Introduced**

HOUSE FILE 416

BY HEDDENS and HEATON

**A BILL FOR**

1 An Act establishing provisions to protect the rights of certain  
2 individuals, including protections against fraud and  
3 financial exploitation, providing for fees and repayment  
4 receipts, and providing penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 633B.3 Acknowledgment of fiduciary  
2 responsibility — forms — registration of power of attorney.

3 1. In order to execute a valid power of attorney in this  
4 state, an individual shall complete a power of attorney which  
5 includes as part of the power of attorney or as an attachment,  
6 an acknowledgment of fiduciary responsibility. The power of  
7 attorney shall be signed and notarized. The attorney in fact  
8 or agent shall register the completed, signed, and notarized  
9 original power of attorney with the secretary of state  
10 within ten days of the execution of the power of attorney.  
11 Registration of the power of attorney shall be accompanied by a  
12 registration fee established by the secretary of state pursuant  
13 to subsection 4.

14 2. *a.* The state court administrator shall develop and  
15 approve the content of a power of attorney, including the  
16 acknowledgment of fiduciary responsibility, to be used in  
17 executing a valid power of attorney. The secretary of state  
18 shall make such power of attorney available to the public. A  
19 power of attorney from any other source may be used to execute  
20 a valid power of attorney if the power of attorney complies  
21 with the content requirements developed and approved by the  
22 state court administrator.

23 *b.* The acknowledgment of fiduciary responsibility shall  
24 include but is not limited to statements to which the attorney  
25 in fact or agent attests that the attorney in fact or agent  
26 will do all of the following:

27 (1) Act in accordance with the principal's reasonable  
28 expectations to the extent actually known by the attorney in  
29 fact or agent and otherwise in the principal's best interest.

30 (2) Act in good faith on behalf of the principal.

31 (3) Act only within the scope of the authority granted in  
32 the power of attorney.

33 (4) Act loyally for the principal's benefit.

34 (5) Act so as not to create a conflict of interest that  
35 impairs the attorney in fact's or agent's ability to act

1 impartially in the principal's best interest.

2 (6) Act with the care, competence, and diligence ordinarily  
3 exercised by an individual in similar circumstances.

4 (7) Keep a record of all receipts, disbursements, and  
5 transactions made on behalf of the principal.

6 (8) Cooperate with an individual who has authority to  
7 make health care decisions for the principal to carry out the  
8 principal's reasonable expectations to the extent actually  
9 known by the attorney in fact or agent and otherwise act in the  
10 principal's best interest.

11 (9) Attempt to preserve the principal's estate plan, to  
12 the extent actually known by the attorney in fact or agent, if  
13 preserving the plan is consistent with the principal's best  
14 interest based on all relevant factors.

15 c. Any power of attorney document made available to the  
16 public shall be accompanied by information regarding the  
17 responsibilities of an attorney in fact or agent, instructions  
18 for completion of the power of attorney, and information  
19 relating to registration of the power of attorney.

20 3. Upon registration of the power of attorney, the secretary  
21 of state shall execute a certified true copy of the power of  
22 attorney for filing and shall return the original power of  
23 attorney to the attorney in fact or agent. The secretary of  
24 state shall provide an additional certified true copy of the  
25 registered power of attorney upon request of an attorney in  
26 fact or an agent.

27 4. The secretary of state shall establish fees for  
28 registration of a power of attorney and for provision of a  
29 certified true copy of the power of attorney in reasonable  
30 amounts sufficient to offset expenses incurred in the  
31 administration of this section. Fees collected shall be  
32 treated as repayment receipts as defined in section 8.2 and  
33 shall be used for the administration of this section.

34 5. The attorney in fact or agent shall notify the secretary  
35 of state if the power of attorney is revoked or upon death of

1 the principal.

2 6. A power of attorney registered under this section shall  
3 be maintained as a confidential record. However, the secretary  
4 of state shall make available to the public a listing of the  
5 names of all principals and respective attorneys in fact or  
6 agents.

7 7. This section shall apply to a power of attorney executed  
8 on or after January 1, 2014. A power of attorney executed  
9 prior to January 1, 2014, is valid as executed and may be  
10 registered as executed with the secretary of state as provided  
11 under this section.

12 Sec. 2. NEW SECTION. 633B.4 Attorney in fact or agent —  
13 financial exploitation of principal — prohibitions after death  
14 of principal.

15 1. An individual who, while acting as the attorney in fact  
16 or agent for a principal under a power of attorney, financially  
17 exploited the principal, shall not receive any property,  
18 benefit, or other interest following the death of the principal  
19 as an heir, distributee, beneficiary, appointee, or in any  
20 other capacity whether the property, benefit, or other interest  
21 passed under any form of title registration, testamentary or  
22 nontestamentary instrument, intestacy, renunciation, or any  
23 other circumstance. The property, benefit, or other interest  
24 shall pass as if the attorney in fact or agent who financially  
25 exploited the principal predeceased the decedent.

26 2. An individual who, while acting as the attorney in  
27 fact or agent for a principal under a power of attorney,  
28 financially exploited the principal, and who is a named  
29 beneficiary of a bond, life insurance policy, or any other  
30 contractual arrangement, following the death of the principal  
31 is not entitled to any benefit under the bond, policy, or  
32 other contractual arrangement, and the benefits become payable  
33 as though the attorney in fact or agent had predeceased the  
34 decedent.

35 3. For the purposes of this section, *financial*

1 *exploitation*" means the fraudulent or otherwise illegal,  
2 unauthorized, or improper act or process by which an attorney  
3 in fact or agent takes, appropriates, retains, manages,  
4 disposes of, or otherwise uses the funds, property, assets,  
5 benefits, or other resources of a principal over which the  
6 attorney in fact or agent has power, that results in a monetary  
7 or personal benefit, profit, or gain to a person other than the  
8 principal to the detriment of the principal, or that results  
9 in depriving a principal of rightful access to the principal's  
10 funds, property, assets, benefits, or other resources.

11 Sec. 3. Section 714.16A, Code 2013, is amended to read as  
12 follows:

13 **714.16A Additional civil penalty for consumer frauds**  
14 **committed against elderly older individuals — fund established.**

15 1. a. If a person violates section 714.16, and the  
16 violation is committed against an older ~~person~~ individual,  
17 in an action brought by the attorney general, in addition to  
18 any other civil penalty, the court may impose an additional  
19 civil penalty not to exceed five thousand dollars for each  
20 such violation. Additionally, the attorney general may  
21 accept a civil penalty as determined by the attorney general  
22 in settlement of an investigation of a violation of section  
23 714.16, regardless of whether an action has been filed pursuant  
24 to section 714.16.

25 b. A civil penalty imposed by a court or determined and  
26 accepted by the attorney general pursuant to this section shall  
27 be paid to the treasurer of state, who shall deposit the money  
28 in the elderly victim fund, a separate fund created in the  
29 state treasury and administered by the attorney general for the  
30 investigation and prosecution of frauds against ~~the elderly~~  
31 older individuals. Notwithstanding section 8.33, any balance  
32 in the fund on June 30 of any fiscal year shall not revert  
33 to the general fund of the state. An award of reimbursement  
34 pursuant to section 714.16 has priority over a civil penalty  
35 imposed by the court pursuant to this subsection.

1 2. In determining whether to impose a civil penalty under  
2 subsection 1, and the amount of any such penalty, the court  
3 shall consider the following:

4 a. Whether the defendant's conduct was in willful disregard  
5 of the rights of the older ~~person~~ individual.

6 b. Whether the defendant knew or should have known that the  
7 defendant's conduct was directed to an older ~~person~~ individual.

8 c. Whether the older ~~person~~ individual was substantially  
9 more vulnerable to the defendant's conduct because of age, poor  
10 health, infirmity, impaired understanding, restricted mobility,  
11 or disability, than other persons.

12 d. Any other factors the court deems appropriate.

13 3. As used in this section, "older ~~person~~ individual" means  
14 ~~a person who is sixty-five years of age or older~~ individual as  
15 defined in section 231.4.

16 Sec. 4. NEW SECTION. 714.15A **Financial exploitation of an**  
17 **older individual.**

18 1. A person who financially exploits an older individual is  
19 guilty of the following, as applicable:

20 a. A simple misdemeanor if the value of the resources does  
21 not exceed two hundred dollars.

22 b. A serious misdemeanor if the value of the resources  
23 exceeds two hundred dollars but does not exceed five hundred  
24 dollars.

25 c. An aggravated misdemeanor if the value of the resources  
26 exceeds five hundred dollars but does not exceed one thousand  
27 dollars.

28 d. A class "D" felony if the value of the resources exceeds  
29 one thousand dollars but does not exceed ten thousand dollars.

30 e. A class "C" felony if the value of the resources exceeds  
31 ten thousand dollars.

32 2. For the purposes of this section:

33 a. "*Financial exploitation*" means the fraudulent or  
34 otherwise illegal, unauthorized, or improper act or process  
35 by which an individual takes, appropriates, retains, manages,

1 disposes, of or otherwise uses the funds, property, assets,  
2 benefits, or other resources of an older individual, that  
3 results in a monetary or personal benefit, profit, or gain to  
4 a person other than the older individual to the detriment of  
5 the older individual, or that results in depriving an older  
6 individual of rightful access to the older individual's funds,  
7 property, assets, benefits, or other resources.

8 *b. "Older individual"* means older individual as defined in  
9 section 231.4.

10 Sec. 5. LEGISLATIVE COMMISSION ON ELDER ABUSE PREVENTION.

11 1. The legislative council is requested to establish,  
12 within thirty days of the effective date of this Act, a  
13 legislative commission on elder abuse prevention to continue  
14 the work of the elder abuse task force established pursuant to  
15 2012 Iowa Acts, chapter 1056, and to develop a comprehensive  
16 approach to elder abuse prevention and intervention in the  
17 state. In addition to legislative members of the commission,  
18 the commission shall include representatives of the department  
19 on aging, the office of long-term care resident's advocate, the  
20 department of human services, the department of inspections  
21 and appeals, the department of public health, the office of  
22 the attorney general, the department of veterans affairs,  
23 the department of public safety, the insurance division of  
24 the department of commerce, a county attorney's office with  
25 experience in prosecuting elder abuse, the superintendent of  
26 banking, the courts, and the elder law section of the Iowa  
27 state bar association. The commission may form workgroups  
28 to address specific elements of elder abuse, and may invite  
29 individuals with interest or expertise to participate in the  
30 workgroups.

31 2. The legislative commission shall review the report of the  
32 elder abuse task force submitted in December 2012, and shall  
33 make recommendations to implement the recommendations included  
34 in the report, including in regard to all of the following:

35 a. The overall design of the comprehensive approach to

1 elder abuse prevention and intervention in the state. The  
2 commission shall consider whether to integrate the approach  
3 to elder abuse into the existing dependent adult abuse  
4 system pursuant to chapter 235B by utilizing a reporting,  
5 investigation, and registry approach or, alternatively, by  
6 harmonizing the approach to elder abuse with the dependent  
7 adult abuse system by continuing to utilize the prevention of  
8 elder abuse program pursuant to section 231.56A and the office  
9 of substitute decision maker created pursuant to chapter 231E  
10 in addressing elder abuse. The commission shall also determine  
11 how to incorporate the approach to elder abuse into other  
12 existing and developing entities including the area agencies on  
13 aging, the mental health and disability services regions, local  
14 public health departments, the local offices of the department  
15 of human services, the court system, and other appropriate  
16 entities to most effectively and efficiently address the needs  
17 of older individuals. The commission shall also address the  
18 need for specialized elder abuse units in police departments,  
19 the office of attorney general and prosecutors' offices,  
20 and other entities, and whether specialized elder abuse  
21 courts should be developed as a mechanism for addressing  
22 elder abuse and the needs of older individuals in the court  
23 system. The legislative commission shall make recommendations,  
24 including the changes in law and rules necessary to implement  
25 the recommended approach as determined by the legislative  
26 commission.

27 b. The definition of elder abuse to be used in the approach  
28 to elder abuse. The legislative commission shall address  
29 continued use of the definition of "elder abuse" as specified  
30 under the federal Older Americans Act and utilized by the  
31 prevention of elder abuse program under section 231.56A, or  
32 shall provide a specific alternative definition.

33 c. The designation of a single point of contact to report  
34 elder abuse. The legislative commission shall specifically  
35 address utilizing the aging and disability resource center

1 network as the single point of contact.

2 d. The means of addressing financial exploitation of older  
3 individuals including those relating to powers of attorney and  
4 conservatorships as described in the 2012 task force report.  
5 The legislative commission shall enlist the involvement  
6 of the elder law and probate sections of the Iowa state  
7 bar association to review, develop, and submit as proposed  
8 legislation for the 2014 legislative session, the uniform power  
9 of attorney Act. The legislative commission shall determine  
10 whether and what specific crimes should be established  
11 to address financial exploitation of older individuals.  
12 The legislative commission shall also address whether to  
13 establish financial abuse specialist teams (FAST) to provide a  
14 concentrated, consistent, and systematic approach to prevent,  
15 identify, investigate, and remedy financial exploitation of  
16 older individuals and dependent adults.

17 e. Promotion of public awareness of elder abuse and the  
18 services and support available to older individuals at risk of  
19 or experiencing elder abuse.

20 f. Any specific changes in statute and rules necessary to  
21 achieve the recommendations of the legislative commission.

22 3. The legislative commission shall submit a report of its  
23 recommendations and proposed legislation to the governor and  
24 the general assembly no later than December 15, 2013.

25 EXPLANATION

26 This bill relates to provisions to protect the rights of  
27 certain individuals including protections against fraud, and  
28 financial exploitation.

29 The bill includes a provision relating to powers of  
30 attorney. The bill provides that in order to execute a valid  
31 power of attorney in the state, an attorney in fact or agent  
32 shall complete, sign, and notarize a power of attorney form  
33 which includes an acknowledgment of fiduciary responsibilities  
34 and register the completed, signed, and notarized original  
35 power of attorney with the secretary of state within 10 days

1 of its execution. Registration of the power of attorney is  
2 to be accompanied by a registration fee established by the  
3 secretary of state. The bill directs the secretary of state  
4 to make power of attorney forms, including acknowledgments of  
5 fiduciary responsibility developed and approved by the state  
6 court administrator available to the public. Other forms that  
7 comply with the content developed and approved by the state  
8 court administrator may be used to execute a valid power of  
9 attorney. The bill specifies the content of the acknowledgment  
10 of fiduciary responsibility form and directs that the power of  
11 attorney form is to be accompanied by information regarding the  
12 responsibilities of the attorney in fact or agent, instructions  
13 for completion of the form, and information relating to  
14 registration of the form.

15 Upon registration of the power of attorney, the secretary  
16 of state is required to execute a certified true copy of the  
17 power of attorney for filing and return the original power of  
18 attorney form to the attorney in fact or agent. The secretary  
19 of state is also required to provide an additional certified  
20 true copy of the registered power of attorney upon request  
21 of an attorney in fact or an agent. The secretary of state  
22 is directed to establish fees for registration of a power of  
23 attorney and for provision of a certified true copy of the  
24 power of attorney in reasonable amounts sufficient to offset  
25 expenses incurred in the administration of the registration of  
26 powers of attorney provisions. An attorney in fact or agent  
27 is directed to notify the secretary of state if the power  
28 of attorney is revoked or upon death of the principal. The  
29 power of attorney forms registered are to be maintained as a  
30 confidential record, but the secretary of state is to make a  
31 listing of the names of all principals and respective attorneys  
32 in fact or agents available to the public. The provisions  
33 apply to a power of attorney executed on or after January 1,  
34 2014. A power of attorney executed prior to January 1, 2014,  
35 is valid as executed and may be registered as executed with the

1 secretary of state as provided under the bill.

2 The bill provides that an individual who, while acting  
3 as an attorney in fact or agent under a power of attorney,  
4 financially exploited the principal, is prohibited from  
5 receiving any property, benefit, or other interest following  
6 the death of the principal as an heir, distributee,  
7 beneficiary, appointee, or in any other capacity whether  
8 the property, benefit, or other interest passed under any  
9 form of title registration, testamentary or nontestamentary  
10 instrument, intestacy, renunciation, or any other circumstance.  
11 The property, benefit, or other interest shall pass as if  
12 the attorney in fact or agent who financially exploited  
13 the principal predeceased the decedent. Additionally, an  
14 individual who, while acting as the attorney in fact or agent  
15 under a power of attorney, financially exploited the principal,  
16 and who is a named beneficiary of a bond, life insurance  
17 policy, or any other contractual arrangement, following the  
18 death of the principal is prohibited from receiving any benefit  
19 under the bond, policy, or other contractual arrangement,  
20 and the benefits become payable as though the attorney in  
21 fact or agent had predeceased the decedent. The bill defines  
22 "financial exploitation" for the purposes of the prohibitions.

23 The bill amends existing law relating to consumer frauds  
24 perpetrated against the elderly to instead refer to older  
25 individuals, consistent with the federal Older Americans  
26 Act, as individuals 60 years of age or older. Previously,  
27 the victim of a consumer fraud against the elderly was an  
28 individual 65 years of age or older.

29 The bill establishes the crime of financial exploitation  
30 of an older individual. The penalties vary depending upon  
31 the value of the resources involved in the crime. The bill  
32 defines financial exploitation for the purposes of the crime of  
33 financial exploitation of an older individual.

34 The bill directs the legislative council to establish a  
35 legislative commission on elder abuse prevention within 30

1 days of the effective date of the bill to continue the work  
2 of the elder abuse task force established in 2012 and to  
3 develop a comprehensive approach to elder abuse prevention and  
4 intervention in the state. The bill specifies the membership  
5 of the commission, and provides that the commission may form  
6 workgroups to address specific elements of elder abuse, and may  
7 invite individuals with interest or expertise to participate  
8 in the workgroups. The bill directs the commission to review  
9 the report of the elder abuse task force submitted in December  
10 2012, and make recommendations to implement the recommendations  
11 included in the report, including those regarding the overall  
12 design of the comprehensive approach to elder abuse prevention  
13 and intervention in the state; the definition of elder abuse  
14 to be used in the comprehensive approach to elder abuse; the  
15 designation of a single point of contact to report elder  
16 abuse; the means of addressing financial exploitation of older  
17 individuals including those relating to powers of attorney  
18 and conservatorships, and including the development of draft  
19 legislation to enact the uniform power of attorney Act in the  
20 2014 legislative session; promotion of public awareness of  
21 elder abuse and the services and support available to older  
22 individuals at risk of or experiencing elder abuse; and any  
23 specific changes in statute and rules necessary to achieve  
24 the recommendations of the legislative commission. The  
25 legislative commission is required to submit a report of its  
26 recommendations and proposed legislation to the governor and  
27 the general assembly no later than December 15, 2013.